IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5481 OF 2005

1. Shivaji Y. Katikar, .. Petitioner

Vs

1. Shri Namdeo Babanrao Sutar
deceased, through his L.Rs
Smt.Sulochana Namdeo Sutar and ors. .. Respondents

Mr Rajesh More, for the petitioner.

Mr Avinash B.Avhad for R.Nos 2 to 7.

CORAM : D.B.BHOSALE,J.

DATE : 03.10.2005.

PC:

1, Heard the learned counsel for the parties.

2. Rule, returnable forthwith. Mr.Avhand, learned counsel, waives service for respondent nos 2 to 7. By consent of the parties, petition is taken up for final hearing.

3. The petitioner has challenged the order dated 2.7.2005 passed below Exhibit-52 in Civil Suit No.150 of 2001 rejecting the application filed by him seeking permission to lead secondary evidence by way of zerox copy of the lease agreement dated 10.4.1998. The said

agreement was executed by the respondents-defendants in favour of the petitioner-plaintiff by which he had given the suit premises to the petitioner on lease. According to the petitioner, the original agreement was retained by the landlord and a zerox copy thereof only was given to him. In view of this, the petitioner gave notice to the respondents to produce the original agreement before the Court. The respondents, however, denied the execution and possession of the original lease agreement, a zerox copy of which is placed on record by the petitioner. It is against this backdrop, the petitioner filed an application Exhibit-52.

4. The application was rejected mainly on the ground that the original copy of the agreement should be with the petitioner and not with the respondents. This observation was made on the basis of the fact that admittedly earlier such agreement was retained by the petitioner.

5. The law does not lay down as to who should retain original copies of an agreement, such as lease agreement, leave and licence agreement etc. Normally, owner of the property is entitled to custody of the title deeds relating to it. However, this anology would

not apply if it is an agreement of lease or leave and licence. By executing such document, owner of the property does not transfer his title of the property to the lessee or licensee, as it happens in case of the sale deed. Therefore, in my opinion, whenever agreements, like lease or leave and licence, are executed the owner, who holds the title of the property, is entitled to retain such documents subject to temporary right and interest created in favour of lessee or licensee. In other words, between lessor or lessee, lessor is entitled to retain the agreement of lease. Keeping this in view, in my opinion, the observation in the impugned order that the original lease agreement ought to be with the petitioner merely because on the earlier occasion he had retained the original with him, is wrong. It is not correct to presume that on this occasion also the original lease agreement was retained by the petitioner.The possibility of rectifying the error committed by the landlord earlier and retaining the original lease agreement with him cannot be ruled out. It is against this backdrop, I am inclined to allow this petition with directions to the Court below to consider and decide the application Exhibit-52 afresh. Hence, the following order.

(a) The order dated 2.7.2005 passed below Exhibit-52 is set aside. The trial Court shall allow the petitioner to sign the application Exhibit-54 and file an affidavit in support thereof within two weeks from the date of receipt of this order and proceed to hear the application Exhibit-52 afresh in the light of the observations made in this order and consider the prayers made therein in the light of the provisions of Sections 65 and 66 in particular of the Indian Evidence Act.

(c) The rule is accordingly disposed of.

(D.B.BHOSALE, J.)